FILED
APR 8 1955
HAROLD B. WILLEY,

No. 650

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

THE STATE OF OKLAHOMA EX REL COMMISSIONERS OF THE LAND OFFICE OF SAID STATE,
Petitioner,

VERSUS

MAGNOLIA PETROLEUM COMPANY, a corporation,
Respondent.

RESPONSE OF PETITIONER TO REPLY BRIEF OF RESPONDENT

MAC Q. WILLIAMSON,
Attorney General of Oklahoma;

FRED HANSEN,
First Assistant Attorney General;

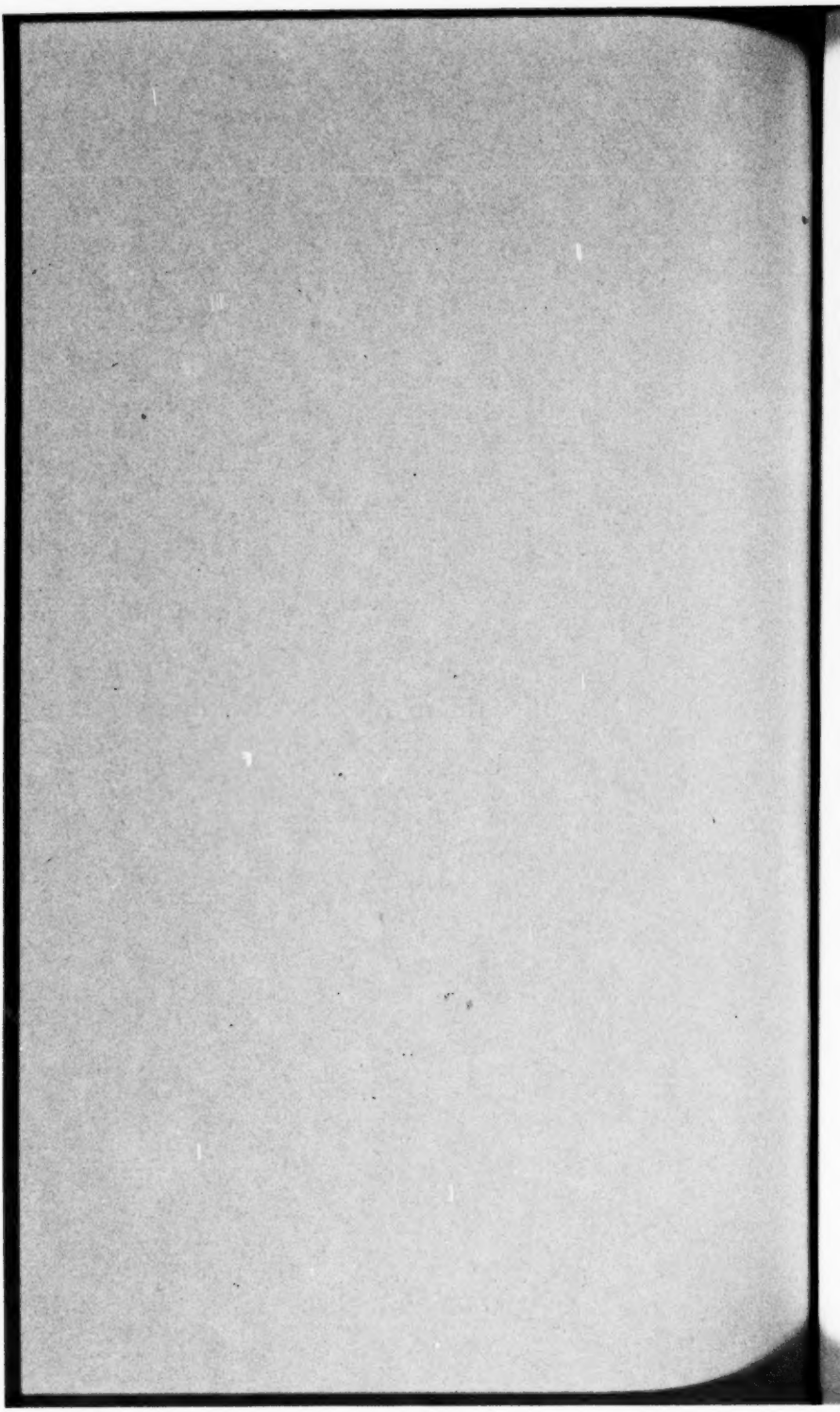
R. H. DUNN,
Attorney for Commissioners of the Land Office;

A. M. DEGRAFFENRIED,
Attorney for Commissioners of the Land Office,

Attorneys for Petitioner,
State Capitol Building,
Oklahoma City, Oklahoma.

April, 1955.

UTTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. FO 5-8750



BLEED THROUGH POOR COPY

INDEX

PAGE

CITATIONS

CASES:

Berryman v. Producers Corporation of Nevada, 206 Okla. 24, 240 P.2d 1111 ..... 1, 2, 3, 5

Corbin v. Wilkinson, 175 Okla. 248, 57 P.2d 45 2

Johnson v. Farmers Union Co-Operative Royalty Company, 205 Okla. 478, 238 P.2d 831 ..... 1, 2, 3, 5

Lucia v. Schaefers et al., 109 Okla. 167, 233 Pac. 444 5

Stevens v. Patten, 174 Okla. 582, 50 P.2d 1106 ..... 1, 3, 4, 5

STATUTES:

Title 12, Okla. Stat. 1951, Sec. 977 2

BLEED THROUGH POOR COPY

In the
Supreme Court of the United States
OCTOBER TERM, 1954

No. 650

THE STATE OF OKLAHOMA EX REL COMMISSIONERS OF THE LAND OFFICE OF SAID STATE,
Petitioner,

VERSUS

MAGNOLIA PETROLEUM COMPANY, a corporation,
Respondent.

RESPONSE OF PETITIONER TO REPLY BRIEF OF RESPONDENT

It is believed further discussion of the three cases relied upon by the respondent, Magnolia Petroleum Company, and which cases formed the basis upon which the United States Court of Appeals, Tenth Circuit, based their opinion, will be of assistance to the Court in determining whether the Writ of Certiorari should be granted.

The case of *Johnson* v. *Farmers Union Co-Operative Royalty Company*, 205 Okla. 478, 238 P.2d 831; *Berryman* v. *Producers Corporation of Nevada*, 206 Okla. 24, 240 P.2d 1111; and *Stevens* v. *Patten*, 174 Okla. 582, 50 P.2d 1106, are the cases which the appellant contends were miscon-

strued in the majority opinion and which apparently are the basis for the majority opinion.

In the State of Oklahoma the syllabus is the law of the case. Title 12, Sec. 977, Okla. Stat. 1951. This has been upheld and approved by the Supreme Court of the State of Oklahoma in the case of *Corbin* v. *Wilkinson,* 175 Okla. 248, 57 P.2d 45. With this statute and the decision of the Supreme Court of the State of Oklahoma in the *Corbin* case, *supra,* in mind, we call the Court's attention to the syllabus in the case of *Johnson* v. *Farmers Union Co-Operative Royalty Company, supra:*

> " 'Constructive notice' is a creation of statute. Compliance with sec. 16, Title 16, O.S. 1941, by recording an instrument affecting title to real property in the county where land is situated constitutes constructive notice of such instrument, and all subsequent purchasers are charged with notice thereof.
>
> "Mineral deed conveying minerals in state school land and certificate of purchase from Land Office, recorded in office of county clerk of county in which land was situated, constituted constructive notice to purchaser taking assignment of certificate of purchase and securing patent covering entire interest in land."

The syllabus in the *Berryman* case is the same as that in the *Johnson* case except the word "thereafter" appears in the second syllabus of the *Berryman* case following the word "purchaser."

To further bolster our position that neither the *Johnson* nor *Berryman* cases are applicable to the facts and the law in the case at bar, we call the Court's attention to an

BLEED THROUGH POOR COPY

excerpt from the *Johnson* case which appears on page 832 of the Pacific Reporter citation:

> "There is only one issue submitted. It is expressed in the simple question of whether or not the filing for record of the mineral deed to plaintiffs in the office of the county clerk of Harmon county constituted constructive notice of plaintiff's claim to the minerals in the SE/4 SW/4. If it did, plaintiffs were entitled to recover. If not, defendants should prevail."

The facts in the *Berryman* case, the *Johnson* case, and the *Patten* case, *supra,* are entirely different to the facts in this case and the law applicable in those cases does not, and cannot, apply in the case at bar. In those cases transfers were made by the holders of the certificates of purchase without the knowledge or consent of the Commissioners of the Land Office. The terms and conditions of each Certificate of Purchase, insofar as the State was concerned, were fully complied with and all payments made. After the last payment was made, in each case, a patent was issued and no question as to the right of the holder of the Certificate of Purchase to sell an interest in such property and vest such interest as against the State was presented or even raised in the trial court or in the Supreme Court of the State of Oklahoma.

In this case, as previously stated, the transfers were made by the holders of the Certificates of Purchase but the terms and conditions of the Certificates of Purchase were broken; the payments were not made, and the Certificates of Purchase were cancelled. No interest could be created by the holders of the Certificates of Purchase that would vest as against the State of Oklahoma. In this connection

we call the Court's attention to the cases cited on page 10 of the Petition for the Writ.

In the *Patten* case, the transfer was also made by the holder of the Certificate of Purchase without the knowledge or consent of the Commissioners and we find the Supreme Court of the State of Oklahoma holding "a purchaser is entitled to possession, rents and profits, and against all of the world except the State, he is to be treated as the owner." This wording is taken from the first syllabus. The second syllabus holds that the purchaser of school land has a right to transfer an interest in the land prior to the delivery of a patent. If these two statements taken from the syllabus in the *Patten* case are reconciled, taken together they could only mean that the holder of the Certificate of Purchase has a right to transfer an interest before delivery of the patent but that such transfer would not within itself vest any interest, right or title as against the State of Oklahoma and would not be binding on the State of Oklahoma.

Following the wording above, if the holder of the Certificate of Purchase is not the owner as against the State of Oklahoma, could he by the execution of an instrument convey an interest in the land, or any portion thereof, and bind the State of Oklahoma by such transfer or vest any interest in such land as against the State of Oklahoma?

A careful reading of all three of these cases discloses that the Supreme Court of the State of Oklahoma has never held that a transfer of mineral rights by the holder of a Certificate of Purchase conveys a vested interest as against the State of Oklahoma unless such transfer has the ap-

BLEED THROUGH POOR COPY

proval of the State. To the contrary, referring back to the wording quoted from the *Patten* case, as against the State of Oklahoma no interest could vest under the conditions, circumstances and facts of the case at bar.

We call the Court's attention again to the case of *Lucia v. Schaefers et al.*, 109 Okla. 167, 233 Pac. 444, wherein the Supreme Court of this State held with reference to transfers of Certificates of Purchase "must be approved by the Commissioners of the Land Office."

It will be noted that the trial court and one member of the panel hearing this case on appeal did not consider the *Berryman, Johnson* and *Patten* cases controlling or even applicable. The same two also held that no vested interest as against the State of Oklahoma was obtained by the Magnolia Petroleum Company.

To permit the decision of the United States Court of Appeals, Tenth Circuit, to stand would mean the loss of trust property not only to the trustees and the beneficiaries but also the trustor, the United States Government.

We again submit a compelling case is presented for the exercise of this Court's certiorari jurisdiction.

Respectfully submitted,

MAC Q. WILLIAMSON,
Attorney General of Oklahoma;

FRED HANSEN,
First Assistant Attorney General;

R. H. DUNN,
Attorney for Commissioners of the Land Office;

A. M. DEGRAFFENRIED,
Attorney for Commissioners of the Land Office,

Attorneys for Petitioner,
State Capitol Building,
Oklahoma City, Oklahoma.

April, 1955.

BLEED THROUGH POOR COPY